

July 28, 2006

FULL NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed rulemaking to amend N.D. Admin. Code chapter 75-02-04.1 regarding the Child Support Guidelines. The public hearing on the rules under consideration will be held on Thursday, November 16, 2006, in Bismarck, N.D., in the AV room - room 210 located on the second floor of the Judicial Wing of the State Capitol, 600 East Boulevard Avenue, Bismarck, North Dakota. The hearing will begin at 10:00 a.m. and will continue until 11:30 a.m. or until no further testimony is offered, whichever occurs first.

The proposed amendments to N.D. Admin. Code chapter 75-02-04.1 are made to comply with N.D.C.C. section 14-09-09.7(4) which requires the Department to institute a new rulemaking proceeding every four years under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of an appropriate child support amount.

Proposed amendments to section 75-02-04.1-01. The definitions of “children’s benefits” and “gross income” are amended to exclude adoption subsidy payments from these definitions. The definition of “net income” is amended to increase the deduction for employee lodging expenses from \$30 per night to \$50 per night.

Proposed amendments to section 75-02-04.1-02. Subsection seven is amended to clarify that whether income is from employment or self-employment, income fluctuations may be taken into account and subsection eight is amended to clarify that extrapolation of future income based on recent past events less than twelve months in duration is an appropriate method of determining an obligor’s gross income under the guidelines.

Proposed amendments to sections 75-02-04.1-03 and 75-02-04.1-08.2. These sections were amended to provide that an offset in split custody and equal physical custody cases is suspended during any months when a child for whom the obligation was determined is on public assistance and the right to support has been assigned to the State. This change reiterates that an offset in a split custody or equal physical custody case is a method of payment only and does not reduce the child support obligation of each parent.

Proposed amendments to section 75-02-04.1-05. This section is amended to clarify that income from self-employment is an example of gross income and should be reduced by any appropriate deductions to determine the obligor's net income.

Proposed amendments to section 75-02-04.1-07. This section is amended to make several changes regarding how income may be imputed. The amendment replaces "prevailing amounts earned in the community" standard for imputation (defined as employment within 100 miles of the obligor's residence) with a "statewide average earnings" standard for persons with similar work history and occupational qualifications. The "look-back period" for imputing earnings based on an obligor's greatest monthly earnings in any twelve consecutive month period is shortened from thirty-six months to twenty-four months. "Voluntary change in employment" (for purposes of court discretion to impute income to an obligor at 100% of the obligor's greatest average monthly earnings in any twelve consecutive months) is defined as a change "made for purposes of reducing the obligor's child support obligation." A provision was added to provide that an obligor whose income has been reduced as a result of a change in employment bears the burden of proving that the change was not made to reduce the obligor's child support obligation. A provision was added to provide that income is not required to be imputed to an uncooperative obligor at a rate of ten percent increase per year in a review proceeding if reliable information regarding the obligor's income can be reasonably obtained from sources other than the obligor. A new subsection is added to provide that imputation of income to an obligor who is a minor or under age 19 and still attending high school is based on a twenty-hour workweek, rather than a forty-hour workweek. A clarification was also made to provide that actual earnings for purposes of imputing income to an obligor includes in-kind income and that imputed income is a form of gross income and should be reduced by any appropriate deductions to determine an obligor's net income.

Proposed amendment to section 75-02-04.1-13. This section was amended to make typographical corrections by changing the words "rebuttedly" to "rebuttably" and "arriving" to "arising".

The proposed rules are likely to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in the rulemaking action.

Copies of the proposed rules are available for review at all North Dakota county social services board offices and at all North Dakota human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearings or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250.

Written data, views, or arguments must be received no later than 5:00 p.m. on November 27, 2006.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least fourteen days prior to the hearing.